

CDP/COMP/498/2025

VS

COMPLAINT

1. On the 10th September 2025, [REDACTED] (the “**complainant**”) lodged a data protection complaint with the Information and Data Protection Commissioner pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that the [REDACTED] (the “**controller**”) failed to erase her personal data that had been published on the website <https://ecourts.gov.mt>.
2. The complainant provided the Commissioner with the following information:
 - a. that, on the 18th July 2025, the complainant requested the controller to remove the judgment [REDACTED] decided by the Court of Magistrates (Malta) presided by Hon. Mag. Dr Donatella Frendo Dimech (Case No. [REDACTED]) and delivered the [REDACTED], from the website <https://ecourts.gov.mt> basing her request on article 17(1)(a) and (c) of the Regulation; and
 - b. that, on the 22nd August 2025, the controller refused to erase the personal data of the complainant on the grounds that “*after careful consideration of Legal Notice 456 of 2021 and Subsidiary Legislation 12.32, it has been determined that three years have not yet elapsed from the date of judgment and the operative period is still ongoing. Therefore, the request for deletion cannot be granted at this stage*”.
3. The complainant submitted the following arguments to support her complaint:

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Wrong application of the law

- a. that Legal Notice 456 of 2021 and Subsidiary Legislation 12.32 do not refer to the operative period of the conditional discharge awarded, nor make reference to the requirement that three (3) years have to elapse from the date of judgment in order for the judgment to be removed;
- b. that it should be noted that according to Legal Notice 456 of 2021 and Subsidiary Legislation 12.32 the person tasked to decide on such matters, is not only not bound by such considerations but has a wide discretion. Regulation 5 reads as follows: “*The Director General (Courts) has the discretion in deciding upon an application for the exercise of the right of erasure of personal data from a court judgment published on the website of the Court Services Agency*”;
- c. that after careful consideration of the laws in question as well as the regulation cited above, the reasons given by the controller, do not emanate from the law but from an internal policy of the same controller, therefore, the complainant believed that such considerations were made after a wrong application of the laws in question;

Reasons which were not considered or ignored

- d. that the complainant was given a conditional discharge under article 22 of the Probation Act (Cap. 446 of the Laws of Malta) and pursuant to article 25 of the said Act, the offence of which the complainant was guilty is to be treated as not constituting a conviction for any purpose;
- e. that, moreover, and without prejudice to the foregoing, removing the judgment from the website will have no adverse impact upon third parties. This was the first offence committed by the complainant and the amount was *de minimis*. The complainant reimbursed the injured party prior to the commencement of the proceedings, and this was also taken into consideration by the Court when delivering its judgment; and
- f. that, therefore, in view of the above, the complainant is of the humble consideration that her request should have been upheld, and that consequently the judgment delivered in the case should have been removed from the website of the controller.

INVESTIGATION

Request for submissions

4. Pursuant to the internal investigative procedure of this Office, the controller was provided with a copy of the complaint and was provided with the opportunity by the Commissioner to submit any information it considered relevant and necessary in response to, and in defence of, the allegation raised by the complainant. The controller failed to provide any submissions.

LEGAL ANALYSIS AND DECISION

5. The Commissioner proceeded to assess the contents of the complaint, in which the complainant alleged that the controller had failed to erase her personal data contained in a judgment that is publicly accessible on its website, <https://ecourts.gov.mt>. The complainant submitted two grounds on which she is basing her complaint: (i) wrong application of the law; and (ii) reasons which were not considered or ignored by the controller.

Wrong application of the law

6. The Commissioner examined the response provided by the controller on the 22nd August 2025 in which the controller refused the request to erase the personal data contained in the judgment on the basis that *“after careful consideration of Legal Notice 456 of 2021 and Subsidiary Legislation 12.32, it has been determined that three years have not yet elapsed from the date of judgment and the operative period is still ongoing. Therefore, the request for deletion cannot be granted at this stage”* [emphasis has been added].
7. The complainant held that regulations 3 and 5 of the Online Publication of Court Judgments (Data Protection) Conferment of Functions Regulations, Subsidiary Legislation 12.32 (the **“Subsidiary Legislation 12.32”**) do not refer to the operative period of the conditional discharge awarded, nor make reference to the requirement that three (3) years have to elapse from the date of judgment in order for the judgment to be removed. The Commissioner refers to regulations 3 and 5 of Subsidiary Legislation 12.32, which read as follows:

“3. The Director General (Courts) shall, subject to the provisions of the Data Protection Act, have the function and power to determine whether a person has valid grounds to exercise the right of erasure of personal data in respect

of the content of a court judgment published online on the website of the Court Services Agency.”.

...

“5. The Director General (Courts) has the discretion in deciding upon an application for the exercise of the right of erasure of personal data from a court judgment published on the website of the Court Services Agency.”.

8. The Commissioner emphasises that, despite the wording of Subsidiary Legislation 12.32, the controller responsible for the processing of personal data is not the Director General (Courts) but rather the Court Services Agency, as defined under article 4(7) of the Regulation. As a controller, the Court Services Agency bears the responsibility for complying with the provisions of the Regulation, including, article 17 of the Regulation. Importantly, article 17 of the Regulation provides for an obligation, rather than a discretion, to erase personal data where at least one of the grounds for erasure applies. Accordingly, the Regulation does not permit the controller to rely solely on discretionary powers, nor does it allow the controller to impose conditions not grounded in law, before erasure can be granted. For the reasons outlined above, the Commissioner concurs with the complainant that the ground for refusal cited in the response dated the 22nd August 2025 is not based on article 17 of the Regulation.
9. **The Commissioner draws the attention of the controller to ensure that any request for erasure submitted by a data subject must be assessed in accordance with the applicable legal framework, namely, article 17 of the Regulation.**

Reasons which were not considered or ignored

10. The complainant held that her request for the erasure is based on article 17(1)(a) and (c) of the Regulation. The Commissioner proceeded to assess these two grounds which provide as follows:

“1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

(a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

(c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);”.

11. The Commissioner examined the arguments put forward by the complainant in support of her request for erasure, specifically, the withdrawal of her consent for the judgment to remain available online. As a preliminary consideration, the Commissioner notes that the legal basis for the controller’s processing of personal data is not consent, as indicated by the complainant. Consent may serve as a lawful basis only where specific conditions of valid consent are met in terms of article 4(11) and article 7 of the Regulation. However, in this context, consent is certainly not the appropriate legal basis for the controller to publish court judgments. Moreover, the right of the data subject to withdraw consent in terms of article 7(3) of the Regulation only applies where consent has been validly obtained by the controller, which is certainly not the case in the circumstances of this complaint. Accordingly, the complainant’s interpretation of consent, as well as the assertion that consent has been withdrawn, is unfounded.

12. The Commissioner further notes that the controller is a public authority, and the publication of judgments is deemed to be a processing operation legitimised on the grounds of article 6(1)(e) of the Regulation. This provision reads as follows:

“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.

13. The Commissioner emphasises that, in a democratic society, it is a widely accepted principle that the public should have access to judgments delivered by the Courts, whether they are of a civil or a criminal nature. Access to judgments is not only a legitimate expectation, but it is also essential for promoting transparency in the judicial process and empowering society as a whole to scrutinise judicial proceedings in the most effective manner. This is also in accordance with article 6(1) of the European Convention on Human Rights which states that *“judgments shall be pronounced publicly”*. Similarly, article 23 of the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta) provides that *“[t]he judgment shall in all cases be delivered in public”*.

14. Accordingly, the Commissioner proceeded to examine article 17(1)(a) of the Regulation, which provides that the controller shall erase *“the personal data are no longer necessary in relation to*

the purposes for which they were collected or otherwise processed". The key consideration under this provision is necessity, assessed in relation to the purpose of the processing. Where the purpose for which the personal data were processed no longer subsists, there are justified grounds for requiring their erasure. In the present case, the Commissioner is of the view that there is a necessary and legitimate public interest in placing court judgments on an online database and keeping them publicly accessible for an indefinite period, provided that the judicial proceedings were conducted in public and no legal exceptions or orders of the Court necessitate their exclusion.

15. The Commissioner assessed article 17(1)(c) of the Regulation, which is another ground cited by the complainant in her request to erase her personal data. The complainant referred to article 21(1) of the Regulation and held that the controller has no compelling legitimate grounds for the continued processing of her personal data. The Commissioner notes that the right to the protection of personal data is not an absolute right and it must be balanced out against other rights and freedoms, subject to the principle of proportionality. Article 21(1) of the Regulation reads as follows:

*"The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. **The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.**"* [emphasis has been added].

16. The Commissioner considered the objections which the complainant submitted, which are as follows: (i) the complainant was given a conditional discharge under article 22 of the Probation Act (Cap. 446 of the Laws of Malta) and pursuant to article 25 of the said Act, the offence of which the complainant was found guilty is to be treated as not constituting a conviction for any purpose; (ii) removing the judgment from the website of the controller will have no adverse impact upon third parties; and (iii) the complainant reimbursed the injured party prior to the commencement of the proceedings and this was also taken into consideration by the Court when delivering the judgment, and therefore, it serves no legitimate purpose for a judgment of this nature, which can be easily be used to trace the identity of the complainant, to remain exposed to the public.

17. As previously indicated in paragraph 13 of the decision, the publication of the judgments must be comprehensive and encompass all judgments, whether of a criminal or otherwise. Consequently, the complainant's assertion that the judgment should not be treated as a conviction is immaterial for the purposes of publication.
18. In response to the complainant's argument that the removal of the judgment would have no adverse impact on third parties, the Commissioner notes that the publication of judgments serves a broader public interest. In particular, it promotes transparency and accountability in the administration of justice. These objectives serve a wider societal interest and, accordingly, the absence of identifiable adverse consequences for specific third parties do not negate the necessity and legitimacy of the continued publication of the judgment for the purpose for which it is processed.
19. With respect to the complainant's claim that the reimbursement of the injured party and the mitigating considerations taken into account by the Court of Magistrates render the continued publication of the judgment unnecessary, the Commissioner observes that such circumstances pertain to the merits of the case [REDACTED]. This does not, however, affect the lawfulness and necessity of publishing the judgment. The Commissioner further clarifies that the purpose of the publication is not punitive, but informational, and aims to reflect the outcome of proceedings as determined by the Court of Magistrates.

On the basis of the foregoing consideration, the Commissioner is hereby deciding that there are no grounds in terms of article 17(1) of the Regulation which enable the erasure of personal data pertaining to the complainant. For this reason, the Commissioner is dismissing the complaint in its entirety.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
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Date: 2025.12.16
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

The parties are hereby being informed that in terms of article 26(l) of the Data Protection Act (Cap. 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof².

An appeal to the Tribunal shall be made in writing and addressed to *"The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta"*.

² Further information on the appeals procedure is available on this Office's website at the following hyperlink: <https://idpc.org.mt/appeals-tribunal/>.